

REMARKS

The Examiner's action dated December 29, 2008, has been received, and its contents carefully noted.

In order to advance prosecution, claim 3 has been cancelled, claim 1 has been amended to more clearly define the contribution of the invention over the prior art, including addition of the subject matter of claim 3, claims 4 and 8 have been amended to correct minor informalities that were noted by the Examiner and new claims 15-17 have been added to more fully define the patentable contribution of the present invention. Claims 15-17 are properly grouped with the claims of Group I.

Support for the amendments to claim 1 will be found in the specification at page 4, in the section entitled Input Data and in the first full paragraph on page 5 of the specification, as well as in original claim 3.

The rejection of the claims being examined under 35 U.S.C. 101 is respectfully traversed for the reason that these claims clearly define subject matter that falls within the statutory categories of invention.

In the explanation of this rejection, the Examiner refers to a memorandum that issued on May 15, 2008. That memorandum clearly states that a process, or method, constitutes statutory subject matter if it is "tied to another statutory class (such as a particular apparatus)".

While the exact meaning of "tied to" is open to interpretation, it is submitted to be clear beyond question that the method defined in claims 1, 2, 4-8 and 15-17 of the present application, and in particular independent claims 1 and 15, define a method that is tied to a particular apparatus.

The method defined in the claims under examination is performed on real signals that are produced in physical apparatus, i.e. UMTS subnetworks. The bodies of the claims recite steps that are carried out on these signals.

Moreover, the claimed method is carried out by acquiring data with a measuring instrument, which is physical apparatus.

The data acquired according to the method is obtained from actual signals which, being detectable by measuring instruments, are clearly not abstract concepts. Other steps of the method are carried out on the basis of the data acquired by the measuring instrument.

As stated in the above-cited memorandum of May 15, 2008: "to qualify as a § 101 statutory process, the claim should positively recite the other statutory class...to which it is tied, for example by identifying the apparatus that accomplishes the method steps". In the present case, the independent method claims under examination clearly identify the apparatus (UMTS network) producing the signals that are

processed by the method according to the invention, and also clearly identify the apparatus (a measuring instrument) used in carrying out the method steps.

Furthermore, since the method according to the invention, as defined in the claims under examination, is carried out using physical apparatus and is performed on detectable electrical signals, these claims cannot possibly be considered to fall under one of the judicial exceptions (law of nature, natural phenomena, or abstract idea).

Accordingly, it is requested that this rejection be reconsidered and withdrawn.

New claims 16 and 17 further establish the statutory nature of the claimed method by reciting a specific physical operation that is performed in response to the acquired data. Support for these claims will be found at several points in the specification, for example at page 7, in the first paragraph following the heading "Findings".

In response to the rejection of claim 1 under 35 U.S.C. 112, this claim has been amended by addition of the inadvertently omitted word "area".

The rejection of claims 1-3 as unpatentable, under 35 U.S.C. 103, over O'Byrne in view of Plehn is respectfully traversed for the reason that the method according to the

present invention, particularly as now defined in independent claims 1 and 15, is not disclosed in, or suggested by any reasonable combination of the teachings of, the applied references.

The method defined in claim 1 differs from the method disclosed by O'Byrne by inclusion of at least the following steps:

preparing an interference matrix based on the acquired measurement data, wherein for the preparation of the interference matrix for each area element, base stations having a power lying in a 10 dB window below the power of the Best Server are registered as interferers, and wherein the interference matrix reflects a statement regarding the interference relationship of each base station with other base stations;

(when preparing the interference matrix) base stations that are necessary for a Soft Handover, SHO, are not rated as interferers.

Furthermore, the secondary reference, Plehn, also does not disclose the second limitation cited above.

This means that even if the disclosures of the applied references could be combined, the resulting combined method would not include the creation of data in which base stations that are not necessary for a soft handover are not rated as interferers. This is a significant feature of the

present invention in that it allows achievement of the improved results intended by this invention.

New claim 15 also distinguishes over the applied references by the following recitations, which are similar to the novel limitations presented in claim 1:

preparing an interference matrix based on the acquired measurement data, wherein the interference matrix reflects a statement regarding the interference relationship of each base station with other base stations;

rating base stations that are necessary for a Soft Handover, SHO, as not being interferers.

Thus, even if the teachings of the references could be combined, the method defined in the present claims would not result.

The rejection of claims 4-8 under 35 U.S.C. 103 is traversed at least for the reason that these claims depend from claim 1, and should be considered allowable along therewith.

In view of the foregoing, it is requested that all of the objections and rejections of record be reconsidered and withdrawn, that at least claims 1, 2, 4-8 and 15-17 be allowed and that the application be found in allowable condition.

If the above amendment should not now place the application in condition for allowance, the Examiner is invited to call undersigned counsel to resolve any remaining issues.

Respectfully submitted,

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